

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CRIMINAL NO. 09-3458-WJ

REEHAHLIO CARROLL,

Defendant.

SEALED ORDER REGARDING DISCLOSURE OF INFORMATION

THIS MATTER comes before the Court upon the Government's *Ex Parte* Disclosure of Information Regarding a United States Witness, filed May 18, 2012 (**Doc. 144**), and the Government's Supplemental *Ex Parte Disclosure of Information Regarding United States Witness*, filed May 24, 2012 (**Doc. 154**).¹ The Government requests that the Court determine whether certain information is material and therefore subject to disclosure to Defendant.

In certain situations, *ex parte* communication in regards to the United States' duty to disclose are proper. *See United States v. Napue*, 834 F.2d 1311, 1317 (7th Cir. 1987) (*Ex parte* proceedings in regards to the Government's duty to disclose are generally disfavored, but may become appropriate where an adversarial proceeding would defeat the purpose of the *ex parte* communication under Fed.R.Crim.P. 16(d)). For example, situations where there is reason to believe that a witness would be subject to physical or economic harm if his identity is released, *see Will v. United States*, 389 U.S. 90 (1967), or situations where classified information can be deleted pursuant to court order from an otherwise discoverable document, *see United States v.*

¹ Defendant's response was due Friday, May 25, 2012 (see Doc. 121 at 2), but no response has been filed.

Mejia, 448 F.3d 436, 455 (D.C. Cir. 2006). However, the Court is not currently confronted with a situation which belongs to any of these categories in which *ex parte* communication would be appropriate under the Federal Rule of Criminal Procedure 16(d)(1). Therefore, the Government must make this determination itself, absent what amounts to an *ex parte* advisory opinion of this Court.

Accordingly, the motion is DENIED.


UNITED STATES DISTRICT JUDGE